

**United States Department of Labor
Employees' Compensation Appeals Board**

V.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER,
Portland, OR, Employer**

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**Docket No. 13-484
Issued: May 9, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 17, 2012 appellant filed a timely appeal from October 25 and December 6, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his cervical, lumbar and left wrist conditions were causally related to the August 23, 2012 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 5, 2012 appellant, then a 36-year-old motor vehicle operator, filed a traumatic injury claim alleging that on August 23, 2012 he sustained neck, back and left wrist injuries as a result of an automobile collision. He stopped work and returned on August 27, 2012.

In an August 23, 2012 motor vehicle accident report, appellant stated that his government vehicle was rear ended while he drove eastbound on Highway 26. He noted that he slowed down with traffic and felt a vehicle collide into the rear end of his car. Appellant reported that he experienced a headache and back and neck pain from whiplash. He was transported to the emergency room at the employing establishment.

In an August 23, 2012 emergency room slip, a registered nurse stated that appellant may return to work but should not drive while taking prescription medication.

On September 18, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he provide additional factual evidence to establish that the August 23, 2012 incident occurred as alleged and a medical report, which included a history of injury, findings on examination, medical diagnosis and a physician's opinion, supported by medical rationale, explaining how the alleged work incident caused a medical condition.

In a September 21, 2012 conference memorandum, the senior claims examiner noted that she spoke with appellant's supervisor by telephone to determine whether he was in the performance of duty at the time the accident occurred. Appellant's supervisor stated that he was driving a government-owned vehicle at the time of the accident in order to transport veterans from their residences to their medical appointments. At the time of the motor vehicle accident, appellant was returning to the employing establishment after the veteran he went to pick up did not show up. Appellant's supervisor stated that he took the most direct route to the employing establishment.

In an October 9, 2012 report, Dr. Charles Wong, a Board-certified internist, stated that he examined appellant for neck, wrist and back injuries following an August 23, 2012 vehicle accident. He related that appellant was driving a transport vehicle for the employing establishment when he was rear ended by a sedan. Dr. Wong reviewed the emergency room records and noted that computed tomography (CT) scans of the head and neck were negative. He also noted that appellant had a previous military service-connected chronic back issue. Upon examination, Dr. Wong observed a supple neck with no masses. He reported that appellant was unable to flex his spine, ribs and pelvis at all. Dr. Wong diagnosed cervical, wrist, thoracic and lumbar strain. He stated that appellant felt he had many issues due to the accident.

In an October 9, 2012 work excuse slip and work capacity evaluation form, Dr. Wong diagnosed neck, back and wrist strain and post-traumatic anxiety. He checked "yes" that the conditions were work related. Dr. Wong authorized appellant to return to limited duty with restrictions of no wheelchair transport and no lifting, pushing, pulling and squatting over 20 pounds. He noted that these restrictions would apply for 4 to 12 weeks. Dr. Wong also stated

that appellant was prescribed pain medication and was not allowed to drive while on the medication.

On October 20, 2012 appellant responded to OWCP's development letter. He stated that he worked as a motor vehicle operator handling wheelchair paramedic transports. Appellant explained that on the date of injury he picked up a patient to deliver to the hospital and drove a government-owned car eastbound on Highway 26 when the accident occurred. He denied any similar disabilities or back, neck and left wrist symptoms before the injury.

In an August 23, 2012 emergency room note, Dr. Richard E. Grazer, Board-certified in emergency room and internal medicine, stated that appellant was a Veterans Affairs employee who was examined in the emergency room with a headache after a vehicle rear-end collision. Appellant also complained of whiplash and neck pain. Dr. Grazer observed no lacerations or contusions to appellant's head. Examination of the neck revealed tenderness bilaterally but no midline tenderness, contusions or bruits. Dr. Grazer noted that a CT scan of the head and neck showed no acute intracranial process or fracture.

In an October 9, 2012 attending physician's report, Dr. Wong stated that on August 23, 2012 appellant was involved in a work-related automobile accident and experienced neck, back and wrist injuries. He noted that appellant had a previous military service-connected back injury. Dr. Wong reported that appellant had back spasms and was unable to flex his spine. He diagnosed neck, back and wrist strains, headaches and post-traumatic anxiety. Dr. Wong checked a box marked "yes" that appellant's conditions were caused by the work-related automobile accident. He authorized appellant to return to limited duty with restrictions of no wheelchair transport and no lifting over 20 pounds.

In a decision dated October 25, 2012, OWCP denied appellant's traumatic injury claim. It accepted that the August 23, 2012 motor vehicle accident occurred as alleged and that he was diagnosed with cervical, thoracic, lumbar and a left wrist strain. OWCP denied appellant's claim finding insufficient medical evidence addressing how his diagnosed conditions were causally related to the employment incident.

In a November 26, 2012 report, Dr. Wong stated that he first examined appellant on October 9, 2012 after an August 23, 2012 work-related automobile accident. He related that appellant was initially evaluated at the Portland Veterans Affairs emergency department with injuries to the head and neck and later complained of injuries to the left wrist. Dr. Wong reported that there was "documentation that he did receive injuries due to the above-referenced accident." He opined that he had "no reason other than to accept these injuries as due to this accident." Dr. Wong authorized appellant to return to limited duty with no wheelchair transports, no lifting over 20 pounds and no driving a motor vehicle while on narcotic medication. He recommended that appellant have a mental health evaluation for post-traumatic stress and anxiety disorder.

On a November 29, 2012 appellant requested reconsideration of the October 25, 2012 decision. He stated that he received an amended report from Dr. Wong that demonstrates that his medical conditions were related to the August 23, 2012 work accident.

In a November 30, 2012 report, Dr. Wong related appellant's complaints of neck, head, back and wrist injuries. Upon examination, he observed a stiff, supple neck with no masses. Dr. Wong also reported that appellant could not flex his spine, ribs or pelvis. He noted that appellant's claim was denied because his records did not state that these various injuries were caused by the August 23, 2012 work-related accident. Dr. Wong stated that he "[had] no reason to doubt that appellant [had] the above[-]referenced injuries from the accident so it [was] more likely than not that he [had] these ongoing conditions due to this accident." He reported that appellant's lumbar spine was limited and it appeared to be related to the injury because he would not have been able to function as a wheelchair operator if this were a preexisting condition.

By decision dated December 6, 2012, OWCP denied modification of the October 25, 2012 decision denying appellant's traumatic injury claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁵ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.⁸

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

OWCP accepted that on August 23, 2012 appellant was involved in a motor vehicle accident in the performance of duty. It denied his traumatic injury claim finding insufficient medical evidence addressing how his diagnosed cervical, lumbar and left wrist conditions were causally related to the accepted incident. The Board finds that appellant did not meet his burden of proof to establish that he sustained cervical, lumbar and left wrist conditions as a result of the August 23, 2012 employment incident.

Dr. Wong related that on August 23, 2012 appellant was involved in a motor vehicle accident and diagnosed cervical, wrist, thoracic and lumbar strains. He authorized appellant to return to limited duty with restrictions of no wheelchair transport, no lifting, pushing, pulling and squatting over 20 pounds and no driving while on pain medication. In an October 9, 2012 work capacity evaluation and attending physician's forms, Dr. Wong checked "yes" that appellant's conditions were work related. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² In a November 26, 2012 report, Dr. Wong explained that based on the August 23, 2012 emergency room records there was documentation that appellant received injuries due to the accident. He opined that he had "no reason other than to accept these injuries as due to this accident." In a November 30, 2012 report, Dr. Wong stated that he had "no reason to doubt" that appellant sustained the above-referenced injuries from the accident. Although he generally supported causal relationship, he did not provide adequate medical rationale explaining how the August 23, 2012 accident caused or contributed to appellant's diagnosed conditions. This is important, as Dr. Wong also noted that appellant had a prior military service-connected back injury. The Board has found that medical evidence that states a conclusion but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ While Dr. Wong had an accurate history of the accepted motor vehicle accident, he failed to adequately explain how appellant's cervical, lumbar and left wrist conditions resulted from this incident. Thus, his opinion is insufficient to establish appellant's claim.

The additional emergency room records are also insufficient to establish appellant's claim. Dr. Grazer described the August 23, 2012 motor vehicle accident and related appellant's

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹³ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

complaints of a headache and back and neck pain. Appellant was authorized to return to work but restricted from driving while taking pain medication. Dr. Grazer provided findings on examination, but he did not provide any opinion regarding whether appellant's conditions were causally related to the August 23, 2012 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ The emergency room records, therefore, also fail to establish causal relationship.

The Board finds that the record does not contain sufficient medical evidence to establish appellant's claim. Appellant did not meet his burden of proof to establish that his lumbar, neck and left wrist strains were causally related to the August 23, 2012 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that his cervical, lumbar and left wrist conditions were causally related to the August 23, 2012 employment incident.

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, *id.*; *A.D.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the December 6 and October 25, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 9, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board